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In re Application of : DECISION ON
KING et al. :
Application No.: 09/642,119 : PETITION UNDER
Attorney Docket No.: U 012912-1 :
For: MICRO WAVE CELLULAR ARCHITECTURE : 37 CFR 1.137(b)

This decision is in response to the "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)" submitted by applicants on 21 August 2000, the "REQUEST FOR REFUND" submitted 24 October 2000, and the "REQUEST FOR REFUND" submitted 25 January 2001.

BACKGROUND

On 11 February 1999, applicants filed international application PCT/AU99/00084, which claimed a priority date of 11 February 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 19 August 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 10 September 1999, which was within nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 August 2000.

On 21 August 2001, applicants filed, *inter alia*, a specification, claims, abstract, drawings, and a preliminary amendment which amended the specification to state that "[t]his application is a continuation of International Application PCT/AU99/00084 filed on 11 FEBRUARY 1999"

On 21 August 2000, applicants also filed the instant "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)".

On 29 September 2000, applicants submitted a declaration of inventors.

On 23 October 2000, the USPTO mailed a "NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION" indicating that an oath or declaration is missing.

On 24 October 2000, applicants submitted a "REQUEST FOR REFUND" which was

accompanied by an assertion of small entity status and a request for refund of one-half (\$605) of the petition fee submitted 21 August 2000.

On 25 January 2001, applicants submitted a "REQUEST FOR REFUND" which asked that the \$1,210 charged to counsel's deposit account on 28 August 2000 be refunded as this payment was made by check.

DISCUSSION

It is noted that two different docket numbers appear to have been used for the above-identified application. The "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)" filed 21 August 2000 and the "REQUEST FOR REFUND" filed 24 October 2000 both identify the docket number as U 012908-2 while all of the other papers identify the docket number as U 012912-1. The "PETITION FOR REVIVAL" and the "REQUEST FOR REFUND" filed 24 October 2000 both, however, specify the above-identified, inventor, title, international application number, and international filing date. All of the papers were placed in the above-identified application. This is construed as what was intended by applicant, as suggested by the statements in the "REQUEST FOR REFUND" filed 25 January 2001. However, if this interpretation is incorrect, applicant is required to notify the Office of PCT Legal Administration in writing *immediately*.

Petition Under 37 CFR 1.137(b)

A petition to revive the present application under 37 CFR 1.137(b) must include:

- (1) The required reply;
- (2) The petition fee;
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional.

As to item (1), the filing of the present continuing application under 35 U.S.C. 111(a) on 21 August 2000 is accepted as an appropriate response under 37 CFR 1.137(b).

As to item (2), applicants submitted the petition fee on 21 August 2000.

With regard to item (3), petitioner has provided the required statement.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

"REQUEST FOR REFUND" filed 23 October 2000

Applicants request for refund of half of the petition fee paid on 21 August 2000 based on later establishment of small entity status is in compliance with 37 CFR 1.28. Deposit Account No. 12-0425 will be credited \$605.

"REQUEST FOR REFUND" filed 25 January 2001

The \$1,210 charged to counsel's deposit account on 28 August 2000 was credited to that deposit account on 28 February 2001.

CONCLUSION

The petition under 37 CFR 1.137(b) to revive international application PCT/AU99/00084 is hereby **GRANTED** as to the National stage in the United States of America for purposes of continuity only and since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuing application number 09/642,119.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the Office of Initial Patent Examination for processing as a regular national application under 35 U.S.C. 111(a) with a filing date of **21 August 2000**.



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